

**AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE PHELPS DODGE MORENCI INC.**

THIS AGREEMENT is entered into this date, March 10th 2005, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and PHELPS DODGE MORENCI INC., acting by and through its BOARD OF DIRECTORS.

I. RECITALS

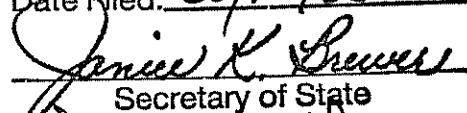
1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

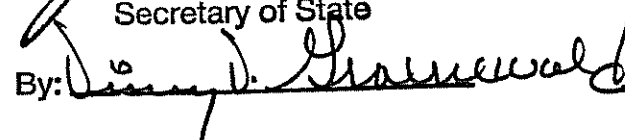
2. The Phelps Dodge Morenci Inc is empowered by Board of Directors to enter into this Agreement resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Phelps Dodge Morenci Inc.

3. As part of the US 191 Morenci to Mine Plant Entrance State's project, the State has agreed to design and construct the following items listed below at it's own expense; Phelps Dodge Morenci Inc. has agreed to be responsible for the electrical power necessary to operate **all** of the traffic signals and street lighting, and provide proper maintenance for the new guardrail.

- a) Install two traffic signal systems at the intersection of:
 - i. US 191 and Burro Alley
 - ii. US 191 at the entrance of Phelps Dodge Morenci Mine Plant
- b) Install the conduit conductor and connections necessary to re-route the existing railroad pre-emption device to the new traffic signal control box.
- c) Install 187 1/2 feet of guardrail along the entrance of Phelps Dodge Morenci Inc. fitness Center at Station 204+40 lt (Phelps Dodge Morenci Inc. will provide maintenance)
- d) Install new street lighting at the following locations:
 - i. US 191 and Burro Alley: Station 13+44 rt, Station 12+42 rt, and Station 12+40 lt.
 - ii. US 191 at the main entrance of Phelps Dodge Morenci Mine Plant: Station 257+06 lt, Station 258+07 lt, Station 257+42 rt and Station 258+69 rt.
- e) Install (2) traffic signs on streetlights owned by Phelps Dodge, located within State's right-of-way along Burro Alley (Project Construction Centerline "A" no charge to the State from Phelps Dodge Morenci Inc)

NO. 27413
Filed with the Secretary of State
Date Filed: 03/10/05


Secretary of State

By: 

4. For identification purposes the existing streetlights are in State's right-of-way at the following locations:

- a) Existing streetlights along Burro Alley (Project Centerline "A")
 - i. Station 2+03 It, Station 5+73 It, Station 10+15 It, Station 3+20 It, Station 7+28 It, Station 4+35 It, and Station 8+73 It.
- b) Existing streetlights from Burro Alley, north to Mine Plant Entrance (Project Centerline "B")
 - ii. Station 21+48 It, Station 23+26 It, and Station 25+05 It.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State Shall:

a. Prepare plans, specifications and an estimate and will submit same to the Phelps Dodge Morenci Inc. for comments as appropriate.

b. Advertise for bids and award one or more construction contract(s) for the project. Administer contracts and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by project delays attributable to the State.

c. Upon completion of the project perform the final inspection and notify the Phelps Dodge Morenci Inc. in writing that the project has been constructed in accordance with the project documents and has been satisfactorily completed.

d. Upon completion and acceptance of the project, provide proper maintenance for the following traffic signal systems located at:

- i. US 191 and Burro Alley
- ii. US 191 at the entrance of Phelps Dodge Morenci Mine Plant.

e. Obtain a TCE necessary to install the 187½ feet of guardrail along the entrance of Phelps Dodge Morenci Inc. fitness Center and hereby certifies that all required TCE have been or will be acquired prior to advertisement.

2. Phelps Dodge Morenci Inc. Shall:

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. Be responsible for any design consultant and contractor claims for additional compensation caused by project delays or anything else attributable to Phelps Dodge Morenci Inc.

c. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the project's scope of work, such additional costs shall require prior approval of the State.

d. Upon completion and acceptance of the Project, be responsible to provide electrical power to operate all the traffic signals and street lighting.

e. Continue to operate and provide proper maintenance to the streetlights referenced in Recital 3 & 4 and provide proper maintenance for the guardrail.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion is provided for herein. However, Phelps Dodge Morenci Inc. shall provide proper maintenance to the guardrail along the entrance of the Phelps Dodge Morenci Inc. fitness Center and continue to operate and maintain street lighting and provide electrical power to operate all the traffic signals and street lighting mentioned in recital 3 & 4 of this Agreement; the State shall in no way be obligated to maintain the guardrail or provide electrical power should Phelps Dodge Morenci Inc. fail to budget or provide proper maintenance as set forth in this Agreement. The State reserves the right to cancel this Agreement at any time prior to the award of the project construction contract, upon (30) thirty-day written notice to the other party.

2. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by Phelps Dodge Morenci Inc. for the vicarious liability of the State as a result of entering into this Agreement. Each party to this contract is responsible for its own negligence.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Sections 12-1518.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007 FAX (602) 712-7424

Phelps Dodge Morenci Inc.
4521 US Highway 191
Morenci, AZ 85540
Attention Mr. Jim Plyler


10. It is understood and agreed to that this Agreement may be amended in writing when deemed necessary by both parties.

11. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written


PHELPS DODGE MORENCI INC.

STATE OF ARIZONA
Department of Transportation

By 
HUNTER WHITE, VICE PRESIDENT
Phelps Dodge Morenci Inc

By 
DOUGLAS A. FORSTIE, P E.
Deputy State Engineer, Operation

ATTEST

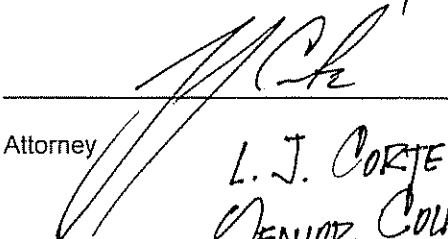
By 

ATTORNEY APPROVAL FORM

I have reviewed the above referenced joint project agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and PHELPS DODGE MORENCI INC. This agreement declares to be in proper form and within the powers and authority granted to Phelps Dodge Morenci Inc. under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 25TH day of JANUARY, 2005

Attorney


L. J. CORJE
SENIOR COUNSEL



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1592TRN (**JPA 04-125**), an Agreement between public agencies, i.e., The State of Arizona and The Phelps Dodge Morenci Inc., has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 1, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

Susan E. Davis
Assistant Attorney General
Transportation Section